IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11011 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREE SWAMINARAYAN SARVAMANGALTRUST-THROUGH-ITS PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11011 of 2004

MR HJ NANAVATI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/09/2004

ORAL JUDGEMENT

Rule. Shri Dipen Desai, Ld. AGP waives service of rule on behalf of the respondent. With the consent of the parties, the matter is taken up for final hearing

today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the State Government dated 29.7.2004 and also the consequential order dated 18.8.2004 passed by the Director of Primary Education, State of Gujarat by which No Objection Certificate for granting the permission to start the PTC college has been cancelled.

3. Shri H.J.Nanavaty, Learned Advocate appearing on behalf of the petitioner has submitted that before cancelling/withdrawing the No Objection Certificate, no opportunity of being heard has been given to the petitioners and the impugned orders are in violation of the principles of natural justice.

4. Shri Dipen Desai, Learned AGP has submitted that in view of the fact that there are certain statements of the Principal admitting the irregularity, show cause notice was not given. However, the fact remains that the opportunity of being heard has not be given to the petitioner trust.

5. Shri H.J.Nanavaty, Learned Advocate has submitted that in fact, he is not aware of any statement made by the Principal and even the petitioner is not even given the copy of those statements and the material relied upon by the Authority.

6. Considering the aforesaid facts and circumstances of the case, the impugned orders passed by the State Government dated 29.7.2004 as well as the consequential order passed by the Director of Primary Education dated 18.8.2004 will not stand as they are against the principles of natural justice. The said orders are accordingly quashed and set aside only on the ground that the same are passed without giving opportunity to the petitioners. This Special Civil Application is allowed. Rule is made absolute to the aforesaid extent. It is however made clear that this Court has not expressed any opinion on the merits of the case and it will be ultimately for the appropriate Authority to take a decision in accordance with law and on merits. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(M.R.Shah, J)
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